

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No.: EB-07-SE-281
)	
Cincinnati Bell Wireless LLC)	Acct. No.: 201132100031
)	
)	FRN: 0003010493
)	

ORDER

Adopted: June 9, 2011

Released: June 9, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Cincinnati Bell Wireless LLC (“CBW”). The Consent Decree terminates an investigation initiated by the Bureau regarding CBW’s compliance with section 20.19(d)(2) of the Commission’s rules¹ pertaining to the deployment of digital wireless hearing aid-compatible handsets.

2. The Bureau and CBW have negotiated the terms of a Consent Decree that would resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether CBW possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. § 20.19(d)(2).

² 47 U.S.C. § 154(i).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Jouett K. Brenzel, Corporate Counsel, Cincinnati Bell Wireless LLC, 221 E. Fourth Street, Suite 103-1280, Cincinnati, OH 45202.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Cincinnati Bell Wireless LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of section 20.19(d)(2) of the Commission's rules¹ regarding the deployment of digital wireless hearing aid-compatible handsets.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "CBW" means Cincinnati Bell Wireless LLC and its predecessors-in-interest and successors-in-interest.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 8 hereof.
 - (g) "Covered Employees" means all employees and agents of CBW who perform duties that trigger or may trigger compliance-related responsibilities under section 20.19 of the Rules and other Rules, Commission orders or statutory requirements governing wireless hearing aid-compatible handsets, including the design, selection or acquisition of wireless handsets, or the marketing or distribution of such handsets to consumers in the United States.
 - (h) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ 47 C.F.R. § 20.19(d)(2).

- (i) “Investigation” means the investigation commenced by the Bureau’s August 13, 2007 letter of inquiry² regarding CBW’s deployment of digital wireless hearing aid-compatible handsets.
- (j) “Parties” means CBW and the Bureau, each of which is a “Party”.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Congress enacted the Hearing Aid Compatibility Act of 1988 to provide access to telecommunications services for individuals with hearing disabilities in recognition that telecommunications services are an essential component of our daily lives.³ In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.⁴ The Commission established a technical standard for radio frequency interference – the “U3” (now “M3”) rating – that would enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling (a.k.a. microphone) mode, and a separate standard – the “U3T” (now “T3”) rating – for handset production of an audio signal-based magnetic field to enable inductive coupling with hearing aids operating in telecoil mode.⁵ For each of these standards, the Commission further established deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁶ that are compliant with the relevant standard unless the *de minimis* exception applies.⁷ For example, service providers not covered by the *de minimis* exception were required to make available at least two handset models that met, at a minimum, the U3T (“T3”) rating for inductive coupling capability by September 18, 2006.⁸

² Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Jouett K. Brenzel, Esq., Cincinnati Bell Wireless LLC (August 13, 2007).

³ Pub. L. No. 100-394, 102 Stat. 976 (1988), *codified at* section 710(b)(2)(C) of the Act, 47 U.S.C. § 610(b)(2)(C).

⁴ See *Section 68.4 of the Commission’s Rules Governing Hearing Aid Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

⁵ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1),(2).

⁶ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN) and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. § 20.19(c), (d). The *de minimis* exception established in the 2003 *Hearing Aid Compatibility Order* provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility deployment requirements, and manufacturers or mobile service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e). Subsequent amendments to the *de minimis* exception do not apply to the instant case.

⁸ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 71; 47 C.F.R. § 20.19(c)(2)(i)(A).

3. The Commission also adopted reporting requirements to ensure that it could monitor the availability of these handsets and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.⁹ The Commission initially required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation until November 17, 2006, and then annually thereafter through the fifth year of implementation until November 17, 2008.¹⁰

4. CBW reported in its November 17, 2006 hearing aid compatibility status report that it was offering two or more handsets that met the inductive coupling standard.¹¹ On August 13, 2007, the Bureau's Spectrum Enforcement Division ("Division") issued a letter of inquiry ("LOI") to CBW.¹² The LOI directed CBW to submit a sworn written response to a series of questions related to CBW's compliance with section 20.19(d)(2) of the Rules regarding the inductive coupling hearing aid compatibility deployment requirements. CBW responded to the LOI on August 23, 2007.¹³ In its LOI Response, CBW stated that after filing its November 17, 2006 Annual Report, it came to CBW's attention that the Nokia 6126 handset model it had offered since August 16, 2006, did not meet the inductive coupling requirements.¹⁴ CBW explained that the compliant handset model was the Nokia 6126h model.¹⁵ CBW indicated that in February 2007, it began offering another handset that met the inductive coupling requirements.¹⁶

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** CBW agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau. Any violation of the

⁹ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

¹⁰ *Id.*; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004).

¹¹ See LOI Response at 1-2.

¹² See *supra* note 2.

¹³ See Letter from Jouett K. Brenzel, Corporate Counsel, Cincinnati Bell, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (Aug. 23, 2007) ("LOI Response").

¹⁴ See LOI Response at 2.

¹⁵ *Id.* This is consistent with the Bureau's understanding that when the new hearing aid compatibility requirements took effect in September 2006, there was some confusion among carriers that certain handset models met the inductive coupling requirements, when in fact they only met the acoustic coupling requirements.

¹⁶ See LOI Response at 2.

Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of said Investigation, CBW agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against CBW concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against CBW with respect to CBW's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, CBW agrees that it shall within sixty (60) calendar days after the Effective Date (i) develop and implement a Compliance Plan related to future compliance with the Act, the Rules, and the Commission's orders, including section 20.19 of the Rules, and other Rules, Commission orders and statutory requirements governing wireless hearing aid-compatible handsets; (ii) establish standard, internal operating procedures and policies ("Operating Procedures") that CBW shall follow to ensure compliance with section 20.19 of the Rules and other hearing aid compatibility requirements; and (iii) incorporate such Operating Procedures into a Compliance Manual pursuant to paragraph 8(c) hereof. The Compliance Plan shall include, at a minimum, the following components:

(a) **Regulatory Steering Committee.** CBW has established, and shall maintain, a Regulatory Steering Committee to ensure compliance with a variety of federal and state regulatory requirements and the terms of this Consent Decree. The Regulatory Steering Committee shall serve as a resource for resolving questions related to the Compliance Plan and CBW's compliance with applicable hearing aid compatibility requirements, and shall act as a central point of contact for the dissemination of the Commission's hearing aid compatibility requirements throughout the company. The Regulatory Steering Committee, with input from the Compliance Officer, shall oversee the development and implementation of the Training Program and shall monitor changes to the Commission's hearing aid compatibility rules to ensure that those changes are documented in the Compliance Manual discussed in paragraph 8(c) and disseminated appropriately to all Covered Employees, as defined herein. The Regulatory Steering Committee shall include representatives from CBW's legal and regulatory departments.

(b) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, CBW shall designate a senior corporate manager to serve as a Compliance Officer. The Compliance Officer shall be responsible for administering the Compliance Plan and ensuring compliance with this Consent Decree, shall be familiar with the FCC's requirements governing wireless hearing aid-compatible handsets and other relevant Rules, and shall report to the Regulatory Steering Committee.

(c) **Compliance Manual.** The Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall (i)

describe the Commission's handset deployment and other wireless hearing aid compatibility requirements; and (ii) set forth the relevant Operating Procedures that CBW will follow to ensure compliance with such requirements. CBW shall periodically review and, to the extent necessary, revise the Compliance Manual to ensure that it remains current and complete. Any such revisions shall be disseminated promptly to all Covered Employees.

(d) Training Program. Within sixty (60) calendar days after the Effective Date, CBW shall establish and implement a Training Program on compliance with the Commission's digital wireless hearing-aid compatible handset deployment requirements. The Training Program shall be provided to all Covered Employees. Any person who becomes a Covered Employee at any time after the initial training session shall be provided such training within thirty (30) calendar days after the date such person becomes a Covered Employee. CBW shall conduct the Training Program on an annual basis, and shall periodically review and, to the extent necessary, revise the Training Program to ensure that it remains current and complete, and to enhance its effectiveness.

(e) Operating Procedures for the Availability of Hearing Aid Compatible Handsets. CBW's Operating Procedures shall include internal procedures and policies specifically designed to ensure that CBW offers the requisite number or percentage of hearing aid compatible handsets to consumers as required by the Rules, including the following:

- (i) CBW shall develop a compliance checklist that describes the Commission's hearing aid compatibility requirements and the steps that a Covered Employee will follow to ensure that the inclusion of a new handset model, or discontinuance of an existing handset offering, will not result in a violation of the Commission's digital wireless hearing aid-compatible handset deployment requirements.
- (ii) Prior to ordering any new handset model, or discontinuing any existing handset offering, the Covered Employee responsible for completing, approving or authorizing such action must complete, sign, and date the compliance checklist indicating whether the affected handset is hearing aid-compatible and whether the offering of such handset, or the discontinuance of such handset offering, by CBW will result in a violation of the Commission's digital wireless hearing aid-compatible handset deployment requirements. CBW shall utilize such compliance checklists to prepare its Hearing Aid Compatibility Reports on FCC Form 655, and shall retain such checklists for a period of two (2) years after the Effective Date, or until the FCC Form 655 for the period covered by such checklist has been filed, whichever is later.

(f) Reporting Non-Compliance. CBW shall report any non-compliance with section 20.19 of the Rules, and other Rules, Commission orders or statutory requirements governing wireless hearing aid-compatible handsets within fifteen (15) calendar days after the discovery of such non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that CBW has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that CBW has taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance shall be

submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

(g) Compliance Reports. CBW shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (i) Each compliance report shall include a detailed description of CBW's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Commission's requirements governing wireless hearing aid-compatible handsets. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of CBW, stating that the Compliance Officer has personal knowledge that CBW (A) has established and implemented the Compliance Plan; (B) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (C) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 8(f) hereof.
- (ii) The certification shall be accompanied by a statement explaining the basis for the Compliance Officer's certification and must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (iii) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of CBW, shall provide the Commission with a detailed explanation of (A) each instance of non-compliance; (B) the steps that CBW has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (C) the steps that CBW has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- (iv) All Compliance Reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

(h) Termination Date. Unless otherwise stated, the requirements of paragraph 8 of the Consent Decree shall expire twenty-four (24) months after the Effective Date.

10. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against CBW or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as

expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by CBW with the Act, the Rules, or Commission orders.

11. **Voluntary Contribution.** CBW agrees that it will make a voluntary contribution to the United States Treasury in the amount of thirty thousand dollars (\$30,000.00). The payment must be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). CBW shall also send electronic notification to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov on the date said payment is made.

12. **Waivers.** CBW waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. CBW shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither CBW nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and CBW shall waive any statutory right to a trial *de novo*. CBW hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters addressed in this Consent Decree.

13. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which CBW does not expressly consent) that provision will be superseded by such Commission Rule or order.

15. **Successors and Assigns.** CBW agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the matters set forth herein. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Rules and Commission’s orders.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representative.** The individual signing this Consent Decree on behalf of CBW represents and warrants that he is authorized by CBW to execute this Consent Decree and to bind CBW to the obligations set forth herein. The FCC signatory represents that she is signing this agreement in her official capacity and that she is authorized to execute this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Christopher J. Wilson
Vice President, General Counsel & Secretary
Cincinnati Bell Wireless LLC

Date